IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1676 OF 2003.

Anil Dagadu Kharat. ... Petitioner

Versus.

Sau.Sunita Anil Kharat & others. ... Respondents.

Shri Sandesh Deshmukh i/by smt.V.V.Thorat for the Petitioner.

Shri S.D.Patil for the Respondent No.1.

Ms.M.M.Deshmukh, A.P.P. for the Respondent No.2-State.

CORAM : ABHAY S. OKA, J.

DATED : 25th October, 2005.

P.C.:

1. Rule. The respondents waive service. Considering the facts and circumstances of the case, taken up for hearing forthwith. Heard the learned Advocates appearing for the Petitioner and the Respondent No.1 and the learned A.P.P. for the State.

2. The Petitioner is the husband and the Respondent No.1 is the wife. The Respondent No.2 is the daughter of the Petitioner and the Respondent No.1. An application made by the Respondents Nos.1 and 2 under section 125 of the Code of Criminal Procedure, 1973 was partly allowed by the learned Magistrate by granting monthly maintenance of Rs.500/- to the Respondent No.2-daughter. In a Revision Application filed by the Respondent No.1 and 2, by the impugned order, the

Revisional Court modified the order of the learned Magistrate and directed the Petitioner to pay maintenance of Rs.1000/- per month and Rs.500/- per month to the Respondents Nos.1 and 2 respectively from the date of filing of the original Application.

3. The learned Advocate for the Petitioner submitted that the Petitioner-husband has obtained a decree for restitution of conjugal rights against the Respondents No.1 in the year 1996 and the Respondent No.1 did not abide by the said decree. He pointed out that the learned Magistrate rightly held that there was no evidence on record to show that the Petitioner has neglected to maintain the Respondent No.1-wife. He pointed that the Revisional Court has committed an error in interfering with the impugned Judgment and Order. He submitted that the Respondent No.1 could not establish that apart from his earning as a labourer, the Petitioner has any other source of income. The learned Advocate appearing for the Respondent No.1 has taken me through the Judgment of the Revisional Court and submitted that no interference is called for.

4. I have considered the submissions. The decree for restitution of conjugal rights was passed on 28th June 1996. After the said decree was passed, as observed by the Revisional Court, no further steps were taken by the Petitioner on the basis of the said decree.

It is observed and in my view, rightly, by the Revisional Court that nothing is shown by the Petitioner to indicate that any attempts were made by him to bring back the Respondent No.1 or to maintain the Respondent No.1. Therefore, no fault can be found with the finding of the Revisional Court that the Petitioner has neglected to maintain the Respondent No.1.

5. The material on record indicates that the Petitioner is an agriculturist and is getting a reasonable income. However, there was no justification for the Sessions Court to award the sum of Rs.1000/- per month by way of maintenance to the Respondent No.1 from the date of the application i.e. 10th October 2000 especially when there is a decree for restitution of conjugal rights obtained by the Petitioner. Considering the nature of evidence on record, the impugned order needs modification.

5. Hence the following order is passed:

i) Paragraph 4 of the operative part of the Judgment and Order dated 20th August 2003 is modified and the same will now read as under:

. "The Respondent No.1 do pay maintenance allowance of Rs.1000/- per month to the

Applicant No.1 from the date of passing of the order in this Revision."

ii) The rest of the impugned order is confirmed.

iii) It is clarified that the observations made in this order are only for the purpose of disposal of this petition and will not affect the merits of any other pending proceedings between the parties.

iv) Rule is made partly absolute in the above terms.

v) Parties to act on an authenticated copy of this order.

Judge.